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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of IMANE and JEAN JACQUES LOUIS.	H045818 (Monterey County Super. Ct. No. DR56656)
IMANE THIMOTHEE LOUIS, Respondent, v. JEAN JACQUES LOUIS, Appellant; MONTEREY COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES, Respondent.	

Appellant Jean Jacques Louis (Husband) appeals orders entered in March 2018 modifying his child support and spousal support obligations to Respondent Imane Thimothee Louis (Wife). We find no abuse of discretion in the trial court's orders, and thus affirm the orders.

I. FACTUAL AND PROCEDURAL HISTORY

At the outset, we note deficiencies in the record on appeal. Husband has the burden of ensuring we have a sufficient record on which to assess his claims. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609 (*Jameson*).) Husband designated a limited record on appeal, consisting of only the amended petition for dissolution, the Monterey County

Department of Child Support Services's (DCSS) July 2017 motion to modify child support, Husband's September 2017 request to modify spousal support, the two resulting orders, both filed March 26, 2018, modifying child and spousal support, the notice of appeal, and the trial court's register of actions. Husband did not designate any additional substantive pleadings; nor did he designate the reporter's transcripts from any relevant hearings in the trial court.[1] With that in mind, we discuss the relevant history we are able to glean from the limited record.

The parties married in 2007; Wife initiated a family law case in 2015 by filing a petition for legal separation. She subsequently amended the petition to file for dissolution in February 2016. There are three minor children of the marriage. At the relevant time, Husband was an officer in the United States Army. In April 2017, the trial court ordered Husband to pay Wife $3,189 per month in child support. At that time, the court imputed Wife with $1,387 in monthly income; the record does not indicate the income figure the court used for Husband, except to indicate the court included $3,233 per month in "BAH" and "BAS."[2] Husband was the noncustodial parent, with the court using a 5 percent visitation factor to calculate support.

In a judgment entered in June 2016, the trial court also ordered Husband to pay spousal support to Wife in the amount of $1,800 per month. There is no information in the record about the factors the trial court considered in entering this order; the judgment itself is not part of the record.

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[1] Neither Wife nor DCSS filed briefs in this appeal; DCSS determined the issues raised by Husband do not impact the statewide child support program, and notified this court it would not be filing a brief.

[2] Per the U.S. Department of Defense's Military Compensation website, BAS refers to Basic Allowance for Subsistence, and BAH is Basic Allowance for Housing. (U.S. Dept. of Defense Military Compensation website, "Pay," <https://militarypay.defense.gov/pay/> [as of May 3, 2019], archived at: <https://perma.cc/MH7Z-5VZS>).

The trial court's register of actions suggests DCSS became involved in the case in 2015, prior to Wife filing her amended petition. In July 2017, DCSS filed a motion to modify child support on the grounds Husband was no longer receiving monthly BAH, and had, in fact, received notice from the Army that it had overpaid BAH from October 1, 2016, through April 30, 2017, such that Husband owed his employer over $18,000. DCSS asked the court to reduce Husband's child support obligation to $2,747 per month based on Husband earning $7,585 in gross monthly base salary, and $1,417 per month in non-taxable income from his BAS and "BAQ-DIFF."[3] DCSS included in its calculation that Husband paid $1,095 per month for child support from another relationship, $1,800 per month in spousal support for this relationship, $75 per month for job-related expenses, and $29 per month for health insurance. DCSS based these inputs on an income and expense declaration signed by Husband in June 2017, including the then most recent earning statement attached to that declaration, reflecting Husband's pay in May 2017.

In September 2017, Husband, representing himself, filed a separate motion to modify his spousal support obligation, as his income decreased once the Army determined he was not eligible for BAH, and because he has to repay the BAH he received. Husband indicated his earnings before taxes and deductions was $8,299, referencing his "earnings statements of the last three months," which were not attached to

[3] BAH used to be referred to as Basic Allowance for Quarters, or BAQ. (See *In re Marriage of Stanton* (2010) 190 Cal.App.4th 547, 558.) "BAH-Diff is the housing allowance amount for a member who is assigned to single-type quarters and who is authorized a basic allowance for housing solely by reason of the member's payment of child support." (U.S. Dept. of Defense Military Compensation website, "Different Types of BEH," <https://militarypay.defense.gov/Pay/Allowances/BAH_Types/> [as of May 3, 2019], archived at: <https://perma.cc/BMQ7-M4VD>.)

the motion and are not included in the record on appeal.[4] He estimated $6,700 per month in take-home income, from which he paid $6,084 in child and spousal support, leaving only about $600 to pay his other expenses.

The trial court held a hearing on both motions on February 9, 2018; it issued two written orders, one for each motion, on March 26, 2018. The court reduced Husband's spousal support obligation to $1,500 per month effective October 1, 2017. The record contains minimal information about the evidence on which the court based its ruling, but for the following paragraph included in the order: "The court heard testimony and evidence regarding Family Code 4320 factors and finds that [Husband] has met his burden regarding change of circumstances concerning the decrease in income (i.e. BAH) that he is receiving. Despite the change in circumstances, the court finds that [Wife] has a continued need for spousal support and that she is making a good faith effort to contribute to her earning ability and to improve her marketable skills. . . . Based on the disparity of income spousal support is reduced to $1500.00 per month. . . ."

As required by California Rules of Court,[5] rule 5.275(j)(1)(a), the trial court then used the Department of Child Support Services' California Guideline Child Support Calculator program to reduce Husband's child support obligation to $2,378 per month, beginning July 30, 2017. The court attributed Husband with $7,831 per month in taxable gross income, and $400 in non-taxable gross income. It included the $1,095 he paid in child support from another relationship, the $75 he paid for job-related expenses, and the $29 he paid for health insurance in the calculation as well; it input the reduced spousal support of $1,500 into the new calculation.

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[4] The court's register of actions, which is part of the record, indicates Husband filed an income and expense declaration with the court on the day he filed his spousal support motion.

[5] All future undesignated references to rules of court are to the California Rules of Court.

Husband filed his notice of appeal in propria persona on April 20, 2018; when describing the order from which he was appealing, Husband wrote the order entered "3/26/2018" and "Family Code 4320." In his notice designating the record on appeal, Husband did not specify any proceedings to be included in a reporter's transcript or settled statement. The Judicial Council form affords the appellant an opportunity to specify the points he or she intends to raise on appeal if the designated proceedings for a reporter's transcript or settled statement do not include all of the testimony in the superior court; Husband indicated in his response his objections to both the child support and spousal support orders. Both March 26, 2018 orders are appealable either as orders entered after judgment (Code Civ. Proc. § 904.1, subd. (a)(2)) or as independently appealable interlocutory orders (*In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368-369; *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 637-638.) Husband timely noticed his appeal of both orders. (Rule 8.104(a)(1).)

II. DISCUSSION

On appeal, Husband contends the trial court erred in failing to properly consider his payment of $760 per month towards his BAH debt in calculating child support and spousal support. He generally alleges he is not able to pay the amount of total support the trial court ordered. Husband failed to provide this court a sufficient record to determine whether the trial court properly exercised its discretion in ordering child and spousal support. For this reason, we affirm the trial court's orders.[6]

[6] We note Husband did not fully comply with the procedural requirements of rule 8.204(a) in submitting his opening brief on appeal. He did not cite to legal authority supporting his arguments. (Rule 8.204(a)(1)(B).) He did not limit his recitation of facts to "matters in the record," or cite to the volume and page number of the record when referencing matters that could be found in the record. (Rule 8.204(a)(1)(C), (a)(2)(C).) While self-represented litigants are held to same standards as parties represented by counsel (*ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 208), given the nature of this case, and the fact that family court is a court of equity (*In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 801), we decline to exercise any discretion allowing us to disregard

While the trial court's March 26, 2018 spousal support order indicates the court heard testimony and evidence at the February 2018 hearing, Husband did not designate a reporter's transcript from that hearing as part of the record on appeal. Husband has the burden of ensuring we have a sufficient record on which to assess his claims. (*Jameson, supra,* 5 Cal.5th at pp. 608-609.) ". . . [I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment. [Citations.] 'This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.] 'In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. "[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented." ' [Citation.] ' "A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." ' [Citation.] 'Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' [Citation.] [Fn. omitted.]" (*Ibid*.) The Judicial Council form Husband completed to designate the record on appeal (form APP-003) gives an option to proceed without a record of the oral proceedings in the superior court. It notifies the appellant that doing so means "the Court of Appeal will not . . . consider what was said during those proceedings in determining whether an error was made. . . ." (Judicial Council Forms, form APP-003 at p. 1.) Husband did not check the box indicating his intent to proceed without the record of oral proceedings.

Husband's uncited arguments or contentions. His brief gives sufficient notice to Wife and DCSS of the legal and factual issues on appeal.

It is not clear from the record that Husband asked the trial court to consider his $760 monthly payment to the Army in calculating child support or reassessing his spousal support obligation. Notably, this is one of the facts Husband recited that appears to be outside of the record. (See fn. 6, *ante*.) While the record confirms Husband owes a significant amount of money, it does not specify the terms of any repayment arrangement he made with the Army. None of the earnings statements DCSS provided with its motion to modify child support include a $760 deduction. DCSS asked the court to reduce the amount of income attributed to Husband based on him no longer receiving the BAH. Husband similarly argued to the trial court in his spousal support motion that the previous orders took into account BAH to which he was no longer entitled. As a general rule, in order to raise issues on appeal, Husband had to first raise them in the trial court. (*Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 603.) "The general rule against new issues is subject to an exception that grants appellate courts the discretion to address questions not raised in the trial court when the theory presented for the first time on appeal involves only a legal question determinable from facts that are (1) uncontroverted in the record and (2) could not have been altered by the presentation of additional evidence." (*Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1237-1238.) The question of whether the trial court could adjust either child support or spousal support based on Husband's debt payment is not a legal question determinable from uncontroverted facts incapable of being altered by the presentation of additional evidence.

Even if the trial court did consider Husband's argument, there is insufficient information in the record for us to find that the trial court abused its discretion in either the child support or spousal support orders. We review the child support orders for abuse of discretion, taking into consideration that child support is a " 'highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule. [Citations.]' [Citation.]" (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283; accord *In re Marriage of Lim & Carrasco* (2013) 214 Cal.App.4th 768, 773-

774.) Husband does not argue that the trial court erred in calculating child support pursuant to the statewide guideline child support formula, set forth in Family Code[7] section 4055. The court is required to calculate support using this formula. (§ 4052.) The resulting calculation is presumed to be correct, and may only be rebutted by "admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the [enumerated] factors is found to be applicable by a preponderance of the evidence. . . ." (§ 4057, subd. (b).) One of the enumerated factors is a catch-all, allowing deviation from guideline if "[a]pplication of the formula would be unjust or inappropriate due to special circumstances in the particular case." (§ 4057, subd. (b)(5).) The record before us does not indicate Husband asked the trial court to deviate from guideline, or that he produced admissible evidence showing that application of the guideline formula would be unjust under the special circumstances of the case. To the extent Husband did make this argument to the court, given the absence of a reporter's transcript, we presume the evidence presented by Wife or DCSS authorized the court to deny Husband's request for deviation. (*Jameson, supra*, 5 Cal.5th at p. 609.)

With respect to Husband's objection to the trial court's determination of spousal support, " 'The trial court has broad discretion to decide whether to modify a spousal support order. [Citation.]' [Citation.] In exercising that discretion, the court must consider the required factors set out in section 4320. [Fn. omitted.] [Citation.] The court has discretion as to the weight it gives to each factor [citation], and then ' "the ultimate decision as to amount and duration of spousal support rests within its broad discretion and will not be reversed on appeal absent an abuse of [its] discretion." [Citation.]' [Citation.] Failure to weigh the factors is an abuse of discretion. [Citation.]" (*In re Marriage of Shimkus* (2016) 244 Cal.App.4th 1262, 1273.) The trial court's written order

[7] All future undesignated statutory references are to the Family Code.

states it "heard testimony and evidence regarding Family Code 4320 factors." As we do not have the reporter's transcript, we presume this statement means the court considered each of the factors, including Husband's ability to pay support (§ 4320, subd. (c)), and assigned each factor appropriate weight. We presume the evidence Wife presented at the hearing authorized the order made by the court, despite Husband's complaints that he does not have the ability to pay the amount ordered. (*Jameson*, *supra*, 5 Cal.5th at p. 609.)

In short, given the absence of a record demonstrating an abuse of discretion on the part of the trial court, we have no basis under the law to reverse its child and spousal support orders. What evidence the record provides demonstrates that the trial court considered Husband's change in circumstances and adjusted the orders accordingly within the bounds of its discretion.

III. DISPOSITION

The orders filed March 26, 2018, are affirmed.

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Greenwood, P.J.

WE CONCUR:

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Bamattre-Manoukian, J.

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Danner, J.

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